

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

To: The Wireless Telecommunications Bureau

COMMENTS OF AMERITECH

Ameritech Mobile Communications, Inc. (Ameritech), by its attorneys, submits these comments in response to the Public Notice, DA 98-1504, released July 30, 1998, in the captioned docket. The Public Notice requests comment on three questions posed in a request filed by the State of California 9-1-1 Program Manager (California). These questions are:

1. Must carriers deploy Phase I wireless E911 services if the state statutes do not provide immunity from liability?
2. If yes, is the state required to reimburse carriers for the cost of insurance policies?
3. What is meant by "appropriate PSAP"?

Ameritech requests the Commission to resolve liability issues once and for all. If the Commission declines to adopt any federal immunity from liability, Ameritech requests the Commission to state that carriers are not required to deploy Phase I wireless E911 services unless the state statutes provide immunization from liability, or the cost of insurance is funded through the state cost recovery mechanism. Ameritech also requests the Commission to hold that carriers may fulfill their obligation to transmit 911 calls by transmitting calls via the

local 911 service provider or directly to a location determined by the PSAP, even if that location is not the PSAP itself.

I. STATE LIABILITY IMMUNITY

Ameritech supports California's request for the Commission to resolve liability issues. Ameritech has participated extensively in the E911 rulemaking proceeding and has asked the Commission on several occasions to take action on liability.¹ In the alternative, Ameritech suggested that the Commission could make the obligation to provide wireless E911 service contingent on carriers receiving liability protection from state governments.²

To date, the FCC has deferred to the states for resolution of this issue. In the E911 MO&O, the Commission stated that "it is premature and speculative for the Commission to establish a national standard of liability protection."³ But that statement was made eight months ago, and little progress has been made by the states in immunizing carriers from liability. The Commission also stated that state courts and state legislatures are the

¹ E.g., Petition for Partial Reconsideration of Ameritech, Sept. 3, 1996, at 10-15.

² Reply Comments and Written Ex Parte Presentation of Ameritech, April 1, 1998, at 2-5.; see also Petition for Partial Reconsideration of Ameritech, Sept. 3, 1996, at 14 (suggesting that the E911 requirements could be contingent on carriers receiving indemnification from PSAPs).

³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Memorandum Opinion and Order), FCC 97-402, para. 137, released Dec. 23, 1997 [hereinafter E911 MO&O].

proper forums in which to raise the issue of liability.⁴ Where states have not acted, the Commission requires carriers nevertheless to comply with the Commission's requirement to transmit 911 calls. But if the Commission requires carriers to provide Phase I wireless E911 services, the Commission should resolve the carrier's liability concerns.

Congress also has recognized the need to provide immunity from liability for wireless carriers in their provision of E911 services. The House of Representatives is considering a bill that would make it a federal requirement that states provide immunity from liability for wireless carriers that is on a par with the immunity that the states provide to wireline local exchange carriers.⁵

Although the Commission has been reluctant to preempt state law, the California petition presents two ways that the Commission could resolve liability issues without preempting state law. The Commission could state that its Phase I requirements do not apply unless state statutes provide adequate immunity from liability. And if a state fails to immunize carriers, the Commission could require states to fund a carrier's insurance costs as part of the cost recovery mechanism to be adopted by the state. With these two mandates, the Commission would ensure that carriers have adequate liability protection while not interfering with state jurisdiction over tort and other

⁴ Id. para. 138.

⁵ Wireless Communications and Public Safety Act of 1998, H.R. 3844, 105th Cong. § 9 (1998).

suits that may be brought over the installation, performance, provision and maintenance of E911 services.

The answers to California's Questions #1 and #2 therefore should be:

Carriers are not required to comply with the Phase I requirements until: (a) the corresponding state has enacted laws providing the carrier with adequate immunity from liability for the installation, performance, provision and maintenance of E911 service; or (b) the state cost recovery mechanism includes recovery for the cost of liability insurance.

Only 3 of the 8 states served by Ameritech have adopted appropriate laws. In those states that do not have sufficient liability laws, it may be necessary to obtain insurance coverage for the provision of wireless E911 service. The cost of insurance is a cost of providing E911 service just as software upgrades and cell site modifications are costs of providing E911 service. The state cost recovery mechanism therefore should include the necessary insurance. Without Commission clarification of this issue, it will be difficult for carriers to obtain funding for insurance if a state does not agree to provide such funding.

If the Commission were to concur with Ameritech's proposed response to California's Questions #1 and #2, the Commission should state how the Phase I implementation deadline is affected by the enactment of the state liability legislation. Section 20.18(a) of the Commission's Rules currently gives carriers six months to comply with the E911 requirements after the PSAP requests service. Ameritech previously requested the Commission to clarify that carriers have six months after the later of: (a)

the PSAP requesting service; and (b) the cost recovery mechanism being in place.⁶ Ameritech provided suggested wording for a revised Section 20.18(f). If the Commission were to condition E911 obligations on the existence of state liability immunization laws, Section 20.18(f) could be replaced with the following wording (which could be adopted instead of Ameritech's previous proposal):

(f) Conditions for Enhanced 911 Services The requirements set forth in paragraphs (d) and (e) of this section shall be applicable no sooner than six months after the later of: (a) the date that the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service; (b) the date that a mechanism for recovering the costs of the service is in place; and (c) if the cost recovery mechanism does not include liability insurance, the effective date of adequate state liability immunization laws.

II. APPROPRIATE PSAP

California states that its current practice is to forward 911 calls to the California Highway Patrol, rather than a PSAP. California asks whether this practice is permissible. Ameritech submits that if such routing is not consistent with the current Commission rules, the Commission should revise its rules to permit carriers to route calls via the local 911 service provider or directly to locations specified by the PSAP. The intent of the 911 rules is for end users to be able to contact emergency service personnel. If the state or local government, or the

⁶ Reply Comments and Written Ex Parte Presentation of Ameritech, April 1, 1998, at 7.

PSAP, deems it proper for a public agency other than the PSAP to receive the call, the Commission should permit such alternative routing, because the end user still would be able to contact emergency service personnel.


CONCLUSION

In sum, Ameritech continues to be concerned about the liability of wireless carriers for the delivery of E911 services. Ameritech therefore requests the Commission to: (a) absolve carriers from liability; (b) require state immunization from liability as a prerequisite to the delivery of Phase I services; or (c) require states to reimburse carriers for the cost of insurance. Additionally, Ameritech supports California's request that carriers be permitted to deliver E911 calls to public agencies other than a PSAP, if requested to do so by the PSAP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan J. Bahr, an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens, certify that on this 14th day of August, 1998, I caused to be mailed by first class U.S. mail, postage prepaid, a copy of the foregoing Comments to the following:

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